

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34395

STATE OF IDAHO,)	2008 Unpublished Opinion No. 579
)	
Plaintiff-Respondent,)	Filed: August 5, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
ARROW D. WISSIUP,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Ronald E. Bush, District Judge.

Order revoking probation and ordering into execution reduced sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Arrow D. Wissiup was charged with and pled guilty to grand theft, I.C. §§ 18-2403, 18-2407(1), and was sentenced to a unified term of five years, with three years determinate and the district court retained jurisdiction. After Wissiup completed his rider, the district court suspended his sentence and placed him on probation for four years. Wissiup subsequently violated the terms of his probation and the district court revoked his probation and ordered into execution a reduced term of five years, with two and one-half years determinate. Wissiup filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Wissiup appeals, contending that the district court abused its discretion by revoking his probation and in the alternative, by failing to further reduce his sentence.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772

P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

When we review a sentence that is ordered into execution following a period of probation, we do not base our review upon the facts existing when the sentence was imposed. Rather we examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *State v. Adams*, 115 Idaho 1053, 1055, 722 P.2d 260, 262 (Ct. App. 1989); *State v. Grove*, 109 Idaho 372, 373, 707 P.2d 483, 484 (Ct. App. 1985); *State v. Tucker*, 103 Idaho 885, 888, 655 P.2d 92, 95 (Ct. App. 1982).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in failing to further reduce the sentence. Therefore, the order revoking probation and directing execution of Wissiup's previously suspended reduced sentence is affirmed.